

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARCELLIUS REMBERT,

Defendant.

Case No. 1:12-CR-420

Case No. 1:16-CV-798

OPINION & ORDER

[Resolving Doc. [24](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Garcellius Rembert petitions for habeas corpus relief under 28 U.S.C. § 2255.

He argues that his predicate offenses no longer qualify as crimes of violence and he was improperly sentenced under the [United States Sentencing Guideline § 2K2.1\(a\)\(2\)](#).¹ The Supreme Court's recent opinion in [Beckles v. United States](#)² forecloses his argument.

Defendant Rembert's argument centers on the relationship between the Guidelines and the Armed Career Criminals Act.

On June 26, 2015, the Supreme Court gave an opinion in *Johnson v. United States*, holding that the residual clause of the Armed Career Criminals Act was unconstitutionally vague.³ If a sentencing court imposed an increased sentence based on felonies that qualified under the residual clause alone, that sentence violated a criminal defendant's constitutional right to due process.⁴

¹ Doc. [24](#). The Government opposes. Doc. [27](#). Defendant Rembert replied. Doc. [28](#).

² [No. 15-8544, 2017 WL 855781 \(U.S. Mar. 6, 2017\)](#).

³ [U.S. , 135 S. Ct. 2551 \(2015\)](#).

⁴ *Id.*

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A criminal defendant sentenced under the ACCA residual clause can collaterally challenge his ACCA affected sentence in a § 2255 habeas proceeding.⁵

The Guidelines' career offender provision defines "crime of violence" using the same language ruled unconstitutional in *Johnson*.⁶ Therefore, since *Johnson*, many criminal defendants sentenced using the Guidelines' "crime of violence" provision have argued that *Johnson*'s holding should also apply retroactively to Guidelines cases.

In *Beckles*, the Supreme Court rejected this argument. There, Petitioner argued that because the Court's *Johnson* opinion held "that the identically worded residual clause in the Armed Career Criminal Act . . . was unconstitutionally vague . . . the Guidelines' residual clause is also void for vagueness."⁷ The Court held that because of the Guidelines' advisory nature, they "are not subject to vagueness challenges under the Due Process Clause."⁸

The Supreme Court's decision dictates the outcome of *Beckles*-dependent cases pending across the federal courts. Accordingly, this Court **DENIES** Defendant Rembert's § 2255 petition.

IT IS SO ORDERED.

Dated: March 20, 2017

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁵ *Welch v. United States*, ___ U.S. ___, 136 S. Ct. 1257, 1265 (2016).

⁶ See *United States Sentencing Guideline* § 4B1.2(a) (emphasis added).

⁷ No. 15-8544, 2017 WL 855781, at *3 (U.S. Mar. 6, 2017).

⁸ *Id.*